

ANNUAL REPORT  
OF THE  
REGULATORY FLEXIBILITY COMMITTEE



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

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# REGULATORY FLEXIBILITY COMMITTEE

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### Staff

Diana Agidi  
Fiscal Analyst for the Committee  
Sarah Burkman  
Attorney for the Committee  
Sarah Freeman  
Attorney for the Committee

## **I. STATUTORY DIRECTIVE**

Under IC 8-1-2.6-4, the Regulatory Flexibility Committee is required to monitor competition in the telecommunications industry. In addition to reviewing an annual report on the industry prepared by the Indiana Utility Regulatory Commission (IURC), the Committee is required to review the following issues:

- (1) The effects of competition and technological change in the telecommunications industry and the impact of competition on universal service.
- (2) The status of modernization of the publicly available telecommunications infrastructure in Indiana and the incentives required to further enhance the infrastructure.
- (3) The effects of modernization of telecommunications infrastructure on economic development and educational opportunities.
- (4) The current methods of regulating providers, at both the federal and state levels, and the effectiveness of the methods.
- (5) The economic and social effectiveness of current telecommunications service pricing.
- (6) All other telecommunications issues the Committee considers appropriate.

Under IC 8-1-2.5-9, the Committee is also required to monitor changes and competition in the energy utility industry. In addition to reviewing an annual report on the industry prepared by the IURC, the Committee is required to review the following issues:

- (1) The effects of competition or changes in the energy industry and the impact on residential rates.
- (2) The status of modernization of energy utility facilities in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects of modernization of energy utility facilities in Indiana on economic development.
- (4) The traditional method of regulating energy utilities and the method's effectiveness.
- (5) The economic and social effectiveness of traditional energy utility service pricing.
- (6) The effects of legislation enacted by the United States Congress.
- (7) All other energy utility issues the Committee considers appropriate.

In 2011, the Legislative Council directed the Committee to study the following topics:

- (1) Whether video service franchise fees paid to local governmental units under state-issued or local video service franchise agreements:
  - (A) are used by local units for purposes related to the provision of video service and in a manner consistent with the state's statute governing video service franchises; and

(B) have an anti-competitive effect on the pricing and provision of video service in Indiana;  
as required by HEA 1131-2010 (P.L.51-2011).  
(2) Disproportionate water and sewer rates in Indiana, as requested by HR 15-2011.

## **II. SUMMARY OF WORK PROGRAM**

The Committee met two times during the 2011 interim session: on September 21 and September 28.

The meeting on September 21, 2011, featured remarks by James D. Atterholt, Chairman of the IURC, on the current state of the IURC. Chairman Atterholt also presented the IURC's annual reports on the electric and natural gas industries, while Commissioner Carolene Mays presented the IURC's annual report on the water and wastewater industries. In addition to the IURC reports, the annual report on renewable energy resources in Indiana was presented by the State Utility Forecasting Group (SUFG), along with an overview of the SUFG's 2011 biennial energy forecast for Indiana. Indiana Utility Consumer Counselor A. David Stippler provided an update on the recent activities of the Office of Utility Consumer Counselor.

The Committee also received testimony from Thomas Easterly, Commissioner of the Indiana Department of Environmental Management, on impending federal regulations impacting the electric industry. Brandon Seitz, Director of the Indiana Office of Energy Development, updated the Committee on the status of the state's 2006 Hoosier Homegrown Energy Plan.

The meeting on September 28, 2011, began with the IURC's annual report on the communications industry, followed by a discussion, pursuant to HEA 1131 (P.L.51-2011), of the purposes for which local governmental units use video service franchise fees, and whether the fees themselves have an anti-competitive effect on the pricing and provision of video services. Local government representatives testified about the use of franchise fees by local units to maintain rights-of-way used by video service providers, and to fund public, educational, and governmental (PEG) channels in their communities. A representative from the cable industry testified that the franchise fee structure in Indiana provides preferential treatment to direct broadcast satellite service providers, to the competitive disadvantage of cable and telephone companies that provide video service. A representative of the satellite television industry testified that differences between satellite and cable companies make payment of franchise fees only by cable companies appropriate, and characterized such fees as a form of rent paid by cable companies for the right to use public rights-of-ways and utility poles. At the conclusion of the testimony on these issues, Committee members agreed to refer the Legislative Council to the meeting's minutes on these topics (accessible at the General Assembly's homepage at <http://www.in.gov/legislative/>), rather than to make any formal recommendations on these issues as a Committee.

Also on September 28, the Committee considered the issue of disproportionate water and sewer

rates in Indiana, pursuant to HR 15-2011. The Committee heard about higher rates charged by some municipal water and wastewater utilities to customers who live outside municipal boundaries. Customers affected by these higher rates testified that the rate differential is not justified on a cost-of-service basis. A town financial manager testified that out-of-town rates are agreed to at the time rural customers request service from the town and stated that there are significant cost-of-service differentials between in-town and out-of-town customers. On a separate water and wastewater issue, Alan DeBoy, President of Indiana American Water, discussed the Distribution System Improvement Charge (DSIC) in Indiana, which allows water utilities to periodically recover costs of infrastructure improvements through automatic adjustments of their rates.

The Committee issued no formal recommendations concerning any of the topics it considered during the interim.

Meeting minutes for the Committee can be accessed from the General Assembly's homepage at <http://www.in.gov/legislative/>.